

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Express Mail Contract 13 (MC2013-32)
Negotiated Service Agreement

Docket No. CP2013-41

ORDER APPROVING AMENDMENT TO EXPRESS MAIL CONTRACT 13
NEGOTIATED SERVICE AGREEMENT

(Issued June 24, 2013)

I. INTRODUCTION

The Postal Service proposes an amendment to Express Mail Contract 13.¹ For the reasons discussed below, the Commission approves the Amendment.

During the Commission's initial review of Express Mail Contract 13, the Postal Service informed the Commission that "[t]he Postal Service's standard annual adjustment provision was inadvertently excluded from the draft of the contract that was

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Express Mail Contract 13, June 12, 2013 (Notice). The Amendment is attached to the Notice, labeled as Attachment A (Amendment).

ultimately signed.”² The Postal Service stated that it intended to file an amendment that would annually adjust prices by the average change in Express Mail prices. *Id.* In Order No. 1640, the Commission conditionally approved Express Mail Contract 13.³ The Commission stated that “[i]f the forthcoming amendment contains only the standard annual adjustment provision, [the requisite] condition is satisfied, and the contract is authorized for the three-year term.” *Id.* at 5-6 (footnote omitted). However, the Commission also cautioned that if “the forthcoming contract amendment differs from the standard annual adjustment provision or contains additional terms, the Commission will notice that filing for comment prior to making a finding on whether the conditions of [Order No. 1640] have been satisfied.” *Id.* at 6.

On June 12, 2013, the Postal Service filed notice of an amendment to the existing Express Mail Contract 13. The Amendment adds a new section to the agreement that governs the annual adjustment mechanism for the second and third years of the agreement. Notice, Attachment A at 1. In particular, it bases the price increases for the second and third years of the agreement on the lesser of the average increase in prices of general applicability for “Express Mail Commercial Plus” or the previous year’s prices plus an adjustment factor. *Id.* The Postal Service intends for the Amendment to become effective 1 day after the Commission completes its review of the Amendment. Notice at 1.

² Docket Nos. MC2013-32 and CP2013-41, Response of the United States Postal Service to Chairman’s Information Request No. 1, January 23, 2013, at 2.

³ See Docket Nos. MC2013-32 and CP2013-41, Order Adding Express Mail Contract 13 to the Competitive Product List and Conditionally Approving the Associated Negotiated Service Agreement, January 25, 2013 (Order No. 1640).

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other interested person submitted comments. The Public Representative raises several concerns about the Amendment. PR Comments at 2. First, he states that the Amendment does not meet the condition of Order No. 1640, which he believes required that prices for the second and third contract years increase by the respective price increase for the base product. *Id.* at 2. Second, using historical numbers to support his analysis, the Public Representative states that increasing second and third year prices by the average increase for Commercial Plus Express Mail could result in a volume-weighted percentage price increase less than zero. *Id.* at 3. The Public Representative recommends that the method of determining second and third year NSA price changes be limited to changes in prices of general applicability for the base product. *Id.* at 4. Therefore, the Public Representative recommends that the Commission reject the Amendment as filed and request that the Postal Service refile the Amendment with an adjustment mechanism based on price increases of general applicability for the base product. *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that they meet applicable requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

The Amendment bases the price increases for the second and third years of the agreement on the lesser of the average increase in prices of general applicability for “Express Mail Commercial Plus” or the previous year’s prices plus an adjustment factor.

⁴ Public Representative Redacted Comments, June 20, 2013 (PR Comments). The Commission also reviewed the Public Representative’s comments filed under seal. See Notice of Public Representative of Filing Comments Regarding Express Mail Contract 13 Under Seal, June 21, 2013.

Notice, Attachment A at 1. As the Commission stated in Order No. 1640, the supporting revenue and cost data show that the contract should cover its costs during its first year. Order No. 1640 at 5. With the Notice, the Postal Service filed updated inflation data showing the agreement should continue to cover its costs during years two and three. The updated inflation data indicate that either of the annual rate adjustment alternatives should allow the agreement's revenues to cover costs in years two and three. In addition, as part of the Annual Compliance Determination, the Commission will review the agreement's financial performance for consistency with section 3633(a).

The Public Representative believes the Commission should require a price adjustment mechanism based on the price increases of general applicability for the base product, *i.e.*, for Express Mail rather than Express Mail Commercial Plus. PR Comments at 4. He believes this change would prevent a "volume-weighted percentage price increase less than zero." *Id.* at 3.⁵ Section 3633 does not require the Postal Service to utilize particular annual price adjustments.⁶ Rather, among other things, section 3633 requires each competitive product to cover its attributable costs. 39 U.S.C. § 3633(a). The Commission finds that the Amendment should allow the

⁵ The Commission notes that the second and third year contract prices will be based on the average change in prices of general applicability for Express Mail Commercial Plus or the previous year's prices plus an adjustment factor. The only way the contract's prices could decrease would be if the Postal Service proposed to decrease prices of general applicability for Express Mail Commercial Plus. The contract's second year prices will be based on the lesser of the generally applicable price change for Express Mail Commercial Plus that was approved in Docket No. CP2013-3 or this current year's prices plus the adjustment factor. See Docket No. CP2013-3, Order No. 1536, Order Approving Changes in Rates of General Applicability for Competitive Products, November 8, 2012, at 3, 16. The third year prices will be based on the generally applicable price change for Express Mail Commercial Plus that the Postal Service proposes for 2014 or the second year's prices plus the adjustment factor.

⁶ The Commission has recently approved several amendments that contain adjustment mechanisms that differ from the average increase in prices of general applicability for the base product and found that such provisions should not affect the contract's ability to comply with 39 U.S.C. § 3633(a). See Docket Nos. MC2013-6 and CP2013-6, Order No. 1688, Order Approving Amendment to Priority Mail Contract 46 Negotiated Service Agreement, April 1, 2013, at 3 ("Changing the annual rate adjustment provision to 'Priority Mail Commercial Plus' from 'Priority Mail Retail' does not alter the Commission's prior analysis at this time."); Docket No. CP2011-49, Order No. 1744, Order Approving Amendment to Priority Mail Contract 33 Negotiated Service Agreement, June 11, 2013, at 4-5 (approving a similar amendment); Docket No. CP2011-50, Order No. 1745, Order Approving Amendment to Express Mail Contract 11 Negotiated Service Agreement, June 11, 2013, at 4 (approving a similar amendment).

Express Mail Contract 13 product to continue to cover its costs in years two and three of the contract, and the Public Representative does not suggest otherwise.

Based on its analysis of the supporting data, the Commission finds that the contract as amended comports with the provisions applicable to rates for competitive products in 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7. The addition of the annual rate adjustment provision to the contract satisfies the Commission's condition in Order No. 1640. Accordingly, the Commission approves the Amendment and authorizes the agreement for the full three-year term.

Other considerations. Within 30 days of the expiration of the instant agreement, the Postal Service shall file the annual (by contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the agreement.

In conclusion, the Commission approves the Amendment to Express Mail Contract 13.

IV. ORDERING PARAGRAPHS

It is ordered:

1. As set forth in the body of this Order, the Commission approves the Amendment to Express Mail Contract 13.
2. Within 30 days after Express Mail Contract 13, as amended, terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

By the Commission.

Ruth Ann Abrams
Acting Secretary